12. Define institutional control of EWA, including governance, public participation, linkages to CMARP, and decision making process.
13. Determine existing and reliability of existing legal mechanisms to assure intended use of EWA water released for instream purposes.

CALFED EWA Proposal

CALFED believes that the EWA concept should be further evaluated and developed as soon as possible. To that end, CALFED proposes:

1. A pilot-project EWA should be developed and implemented during the 1998-99 water year.
2. If all the operational, institutional, and assurance issues identified above and others identified during the pilot-project are satisfactorily resolved, CALFED proposes developing and implementing a long-term EWA as soon as possible.

5.3 Assurances and Governance

Overview

CALFED is developing an assurances package which will consist of a set of tools and mechanisms to ensure that the Program will be implemented as agreed. In addition to ensuring that the ERP and other CALFED programs are fully implemented, the intent of this package is to provide regulatory certainty to participants in the CALFED Program throughout the Bay-Delta system.

CALFED recognizes that a number of existing and ongoing programs, especially ecosystem protection and restoration measures being implemented by in-Delta and upstream water users, make significant contributions to meeting CALFED's goals. It is CALFED's intent that those efforts receive similar assurances as similar projects implemented by CALFED. CALFED is evaluating mechanisms an/or processes under which such assurances can be granted.

The assurances package includes mechanisms to be applied early in Stage 1, such as financing and governance, as well as components for the long term, such as the contingency response process. Over the long term, assurances will also be provided through the Conservation Strategy and the Comprehensive Monitoring Plan, both discussed elsewhere in this *Revised Phase II Report.*

The assurances package is an integral part of the implementation plan being developed, and includes mechanisms which are program-wide and element-specific, internal and external, long term and short term. Internal assurances are those mechanisms which are integral to program actions, such as staging, linking and bundling (grouping) of actions together so they progress together. External assurances are those tools which may be applied to the program, including legislation, regulations, or contractual arrangements. Eventually, the assurances package will consist of several related components:

- A programmatic implementation plan or agreement
- Program wide assurances, including a Program oversight and management structure
- Specific assurances for Program elements and actions
- Contingency response process

A package of assurances will be completed before issuance of the Record of Decision (ROD). While the principles of a longer-term assurances package for the remainder of the program will be substantially complete before beginning Stage 1, the details of some components will remain to be finalized during Stage 1.

1999 (Pre-ROD) Actions

Not all of the assurance components will be fully developed prior to beginning Stage 1 implementation. Therefore, CALFED and stakeholders will need to continue work in Stage 1 to complete the long term Assurances Package. However, prior to Stage 1 the following steps will be taken to further develop the assurances package:

1. **Complete a decision on an overall CALFED management structure.** This decision will reflect the manner in which the overall CALFED program is managed and coordinated. It will also assign responsibilities for each of the program's elements to a new entity, existing entity, or combination of entities. Recommendations for required legislation will be made, if necessary.

2. **Complete a decision on an ERP entity**. Over the past two years, stakeholders and CALFED have done considerable work on the concept for a separate entity to carry out the ERP. A high degree of consensus among stakeholders has been reached on the need for a new organization to carry out the many new ERP tasks. The nature and specifics of an ERP entity will be decided, and legislative recommendations made if necessary.

3. **Complete the Conservation Strategy.** The Strategy will include goals and actions for species recovery, and will provide the framework for authorizing incidental take associated with Stage 1 actions.

4. **Complete strategic plans for each program element.** Each of the program's elements will complete a plan detailing: 1) Measurable performance goals; 2) Stage 1 actions; 3) Financing; 4) Recommended governance; and 5) Key milestones and decision points. The plans will give stakeholders, agencies and the public a more complete picture of what can be expected from each part of the program.

5. **Complete the Agricultural Water Use Efficiency Strategic Plan.**

6. **Develop an operational plan for water allocation.** The plan will utilize the State Board's water rights decision for allocation of responsibility to meet flow requirements for Water Quality Control Plan 95-6, and will be consistent with all regulatory requirements including state and federal ESA and including requirements related to the Trinity River.

7. **Identify the first group of Stage 1 projects, and implement an environmental documentation and permit coordination process.** Certain Stage 1 projects which are high priority for Stage 1 and could move forward quickly need to be identified in 1999. To enable these projects to move forward efficiently, a process to coordinate and consolidate permitting and CEQA/NEPA requirements will be implemented. Examples of pre-ROD actions include analysis and environmental review for establishment of an Environmental Water Purchase program, and completion of environmental review for Interim South Delta projects.

8. **Complete a Programmatic Section 404 Assurance Package**. This programmatic document will present a clearly-defined 404 process with appropriate decision criteria. (See **Clean Water Act Section 404** in Chapter 6)
9. **Complete a recommendation on an Urban Conservation Certification entity, and recommend legislation, if necessary**. A decision will be made on what existing or new entity will certify urban water conservation plans for adequacy.

10. **Define a process to provide linkages between program actions.** A process on which to base program ties will be developed, taking into account types of measures, timing and ways to bundle projects (see discussion below).

Stage 1 Assurances

Assurances in Stage 1 may be included in many ways. For example, assurances will be provided through:

- Conservation strategy
- Clean Water Act 404 process
- Governance structure
- The actions selected and proposed for implementation
- Linkage between Stage 1 actions
- Financing

The concept of linkage and bundling provides that actions in different program areas are bundled to provide additional assurances that benefits will be balanced across the Program. Several means of linking or bundling projects have been discussed. They include grouping projects that may be completed within a similar time period; tying projects of interest through a shared CEQA/NEPA process; projects oriented around permitting needs like Clean Water Act Section 404; and grouping projects that are geographically related.

Additionally, since in Stage 1 the program is dealing with short-term implementation efforts there will be frequent and periodic checkpoints at which parties can determine whether the program is meeting their needs and expectations. Effectively, the commitment of all interested parties will not have to be any longer than Stage 1. This reduces the need to develop long term assurances prior to the beginning of Stage 1.

Program Management and Governance

Implementation of the CALFED Program will require some type of general program structure to provide coordinated oversight and policy guidance. A major oversight function will be determining when program implementation milestones or performance indicators have - or have not - been achieved, and then making the necessary reports or findings so that the Program can move forward to the next stage of implementation. Other oversight functions will include development of program budgets, project prioritization, and interagency coordination. Also, CALFED will need to make the necessary decisions and program adjustments due to unforeseen or uncontrollable events, as described in the contingency response process.

The nature of the existing CALFED Bay-Delta Program, however, does not provide the formal structure necessitated for implementing the large-scale program now envisioned. Indeed, the existing structure was not intended to implement the entire Program. The federal and state governments created CALFED's cooperative structure to develop a long-term plan, not to administer a multi-billion dollar program. CALFED therefore was given no independent administrative authorities. As CALFED moves toward implementation, however, the issues of management and governance of that implementation arise.

To date, CALFED has focused on two questions related to program management and governance. First, how will the Program as a whole be implemented, managed and governed? Second, how will the ERP portion of the Program be managed and governed? Efforts are underway currently to convene a panel of experts and practitioners in interagency programs to evaluate the CALFED Program's overall management needs, hold a public symposium, and prepare a report to the CALFED agencies, stakeholders, the Legislature and the Congress.

In addition, the CALFED BDAC Assurances Workgroup has completed a large amount of work studying the need for a separate Ecosystem entity. The Assurances Workgroup has collected and evaluated information on similar multi-agency ecosystem projects from around the country, and has reached a number of conclusions. From this work, the stakeholders have developed a consensus that the ERP needs a new entity for implementation. The Assurances Workgroup also concluded that this new entity should: 1) take responsibility for meeting the

ERP's performance goals; 2) restore the ecosystem in a proactive manner; 3) use an adaptive management approach; and 4) retain a high degree of independence. Conclusions and data from past and upcoming efforts will be used in 1999 to prepare a recommendation from the expert panel to CALFED management, the Legislature and the Congress.

The need for resolving the management/governance issue has become increasingly apparent as CALFED approaches implementation. Effective CALFED implementation demands both timely decisions and efficient actions to carry out those decisions. Making those decisions and carrying out those actions requires an organization that reflects the unique nature of CALFED. Creating such an organization will require substantial time and effort, but the importance of such an effort cannot be underestimated.

Implementation Decisions - Given the range and scope of the decisions that CALFED implementers will face, the decision-making protocol over time is key. Much of the CALFED Program is based on staged decision-making and adaptive management. These decisions will affect the Program's achievement of continuous improvement in all program areas. Timely decision-making remains critical to the success of the entire program.

The decisions needed to ensure the Program's success include:

- Evaluation of water quality and fishery impacts from conveyance, using expert advice, to determine the need for an isolated conveyance and/or other water management options.
- Adaptive management decisions related to ecosystem restoration. The success of the entire ERP depends on adaptive management, allowing future decisions based on results of actions that CALFED takes.
- Maintenance of proper balance among all the water management tools to achieve the Program's water supply reliability objectives and to comply with Clean Water Act Section 404 for storage.

These decisions cannot be deferred. Someone - or some entity - must make them. The decision maker may be a slightly modified CALFED Policy Group, a new governmental entity, or a joint powers authority. Typically, responsibility for such high-level decision rests with the highest departmental officials. It must consider the best scientific information from advisory or other formal scientific bodies.

Implementation Actions - Once critical decisions are made, the CALFED Program will need to implement the decision. Some entity will need to implement each program element (i.e. Levees, Ecosystem Restoration, Water Quality, Conveyance, Storage, Watershed Programs, Water Use Efficiency, Water Transfers, and an overall program management function). This "entity" may be an existing state or federal agency, or a new CALFED organization. Given the breadth of the CALFED program, it will be necessary to evaluate each separate program element to determine the best fit between element and implementing entity. Success of each element depends on taking multiple actions, which may include one or more of the following:

- **Program Coordination.** The linkages between program elements demand coordination among elements, actions and agencies. For example, building setback levees must be coordinated with ecosystem restoration, and levee agencies must coordinate their actions with fish and wildlife agencies.

- **Budget Management** . Implementation requires allocation of resources, prioritizing action funding, and tracking action expenditures.

- **Assignment of Responsibilities and Corrective Actions.** Determining who does what when is fundamental to program implementation. CALFED will face this question as it prepares the Record of Decision. Then, when a contractor or assigned agency does not

perform adequately, corrective action will be required.

- **Stakeholder Participation.** Maintaining clear and open lines of communication with stakeholders is a necessity. Some stakeholders have asked for a formal role in making implementation decisions.

- **Legislative Coordination and Program Responsibility.** Both Congress and the Legislature will need to rely on some entity to take ultimate responsibility for CALFED's success or failure. Appropriating CALFED funding to one entity would simplify appropriation review and debate. Because legislative bodies will review much of the CALFED Program progress, coordinated responses to legislative concerns will provide clearer lines of communication.

- **Project Implementation.** CALFED encompasses a huge array of project actions, from building a levee to adding a fish screen. In many cases, implementation of these pieces of the CALFED Program will be done by an entity with responsibility for a program element rather than the broad CALFED oversight structure.

- **Environmental Review.** Given the number of actions included in the proposed CALFED Bay-Delta Program, there will be a large and continuing need to satisfy environmental permitting, CEQA, and NEPA requirements. This activity could be categorized under Program Coordination or Project Implementation, but its scope and criticality need emphasis here.

- **Project Management and Ownership.** Once a project (such as habitat development) has been completed, the project will require on-going operation and maintenance. The O&M responsibility may or may not fall to the agency who completed the project. Other agencies or private organizations may take such responsibility. The costly nature of O&M over the long term requires that this item be considered carefully.

Given the breadth of the CALFED Bay-Delta Program, implementation will require a structure with a scope broad enough to consider the inter-related effects of all the projects throughout the Delta and nimble enough to respond timely to new information. While creating such a structure may not be achievable in a year, CALFED is committed to setting the direction for creating such a structure by the time of the ROD.

Contingency Response Process

The contingency response process is to be used when elements of the solution cannot be implemented or operated as agreed. It can provide an accountable process that promotes appropriate actions by program managers when contingencies or potentially damaging circumstances affect program functions. It would be designed to minimize program disruption, while at the same time keeping agreed upon linkages and conditions in place. A graded response process is proposed, with corrective actions for minor contingencies, significant disruptions, and catastrophes. These responses are summarized in the following table.